

## FAQs

### **Equitable Participation of Nonpublic School Students and Teachers in No Child Left Behind (NCLB) Discretionary Grant Programs**

This document is intended to provide guidance to local education agencies (LEAs) in meeting the nonpublic school participation requirements for applicable discretionary grant programs.

For more information on nonpublic schools, please visit <http://www.nj.gov/njded/nonpublic/>

#### **Frequently Asked Questions (FAQs)**

#### **1. What is the equitable participation of nonpublic school students and teachers requirement?**

The Uniform Provisions in Title IX of the *No Child Left Behind (NCLB) Act of 2001* (sections 9501-9504) require all LEAs and other agencies that apply to receive federal funds under certain grant programs to provide services to eligible nonpublic school children, teachers and other personnel consistent with the number of eligible children enrolled in nonpublic elementary and secondary schools in the communities or geographic area served by the LEA/applicant agency. These services and other benefits must be comparable to those provided to public school children and teachers participating in the program, and they must be provided in a timely manner.

Through this requirement, nonpublic school students and teachers are provided with an opportunity to participate in activities equivalent to the opportunity provided public school students and teachers. All services to nonpublic school students and teachers must be secular, neutral, and non-ideological.

The implementation of this requirement consists of:

- Notification;
- Consultation; and
- Provision of services, as appropriate.

#### **2. Does this requirement apply only to discretionary grants?**

No. Although this document focuses on discretionary grant programs, the requirement also applies to the following entitlement grants under NCLB

- Title I, Part A – Improving Basic Programs Operated by the LEAs
- Title II, Part A – Teacher and Principal Training and Recruiting Fund
- Title II, Part D – Enhancing Education Through Technology
- Title III, Part A – English Language Acquisition, Language Enhancement and Academic Achievement

- Title IV, Part A -- Safe and Drug-Free Schools and Communities Act (SEA and Governor funds)
- Title V, Part A – Innovative Programs

**Note:** Title I (section 1120) and Title V (section 5142) have their own requirements which differ in some respect from the Uniform Provisions in Title IX.

**3. To which federal discretionary grant programs does the equitable participation requirement apply?**

This requirement applies to all discretionary grants funded under the following programs:

- Title I, Part B – Reading First
- Title I, Part B, Subpart 3 – Even Start Family Literacy
- Title I, Part C – Migrant Education
- Title II, Part A - Teacher and Principal Training and Recruiting Fund
- Title II, Part B – Mathematics and Science Partnerships
- Title II, Part D – Enhancing Education Through Technology
- Title III, Part A – English Language Acquisition, Language Enhancement and Academic Achievement
- Title IV, Part A – Safe and Drug-Free Schools and Communities Act (SEA and Governor funds)
- Title IV, Part B – 21st Century Community Learning Centers
- Title V, Part A – Innovative Programs
- Title V, Part D, Subpart 6 – Gifted and Talented Students.

**4. How will I know if this requirement applies to the discretionary grant program for which I am applying?**

Please refer to the Notice of Grant Opportunity (NGO) for the specific grant program. NGO documents can be accessed at <http://www.nj.gov/njded/grants/discretionary/>

**5. I am an Institution of Higher Education (IHE) or a Nonprofit Organization (NPO). Does this requirement apply to me?**

Yes, this requirement applies to *all* institutions/organizations seeking funding under a program governed by the Uniform Provisions of Title IX.

**6. What is a nonpublic school?**

A nonpublic school is defined in *N.J.A.C. 18A:46A-1* as “an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination of them, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352).”

**7. Where can I find a list of nonpublic schools located in my school district or the geographical area served by my agency?**

A list of nonpublic schools located within each school district can be found on the New Jersey Department of Education Web site at <http://www.nj.gov/njded/nonpublic/>

### **Step 1. Notification**

#### **8. How and when should the LEA/applicant agency contact the nonpublic school(s)?**

It is essential that the appropriate individual(s) at each of the nonpublic schools within the LEA or the geographic area served by the applicant agency be notified in a timely manner (i.e. as soon as possible and **before** the program is designed).

In order to address this requirement, the applicant must first contact in writing (return receipt suggested) the appropriate person(s) at each nonpublic school – normally the principal or chief school administrator -- within the boundaries of the applicant agency and any participating LEA or other agencies. The notification should indicate the applicant's intent to develop an application under this grant program. The applicant must extend an invitation to each nonpublic school to participate in a meeting to discuss the development, design, and implementation of the grant program. The use of passive notification methods, such as newspaper notices, does not satisfy this requirement.

All contacts (and the results thereof) between the applicant agency and the nonpublic schools must be documented. The applicant agency is required to submit the Documentation of Nonpublic School Participation (Attachment A) **and** the signed Affirmation of Nonpublic School Consultation (Attachment B) for each nonpublic school with the application.

#### **9. Who at the nonpublic school(s) should be contacted?**

The applicant agency's letter is to be sent to the principal or chief school administrator of each nonpublic school within the LEA or geographical area served by the applicant agency district.

#### **10. A nonpublic school administrator has informed the applicant agency that the school does not want to participate. What now?**

Nonpublic school administrators may choose whether to participate in a grant program, based on their perceived needs of their students and teachers. What is important is that they have been given a genuine opportunity by the applicant agency to participate in a timely and meaningful manner. For documentation purposes, please obtain the nonpublic school's decision in writing.

**NOTE for Multiyear Programs** – if a nonpublic school chooses not to participate in a grant program in year one, the school may be excluded from participating in subsequent years of the grant program covered by the grant application.

### **11. What happens if there is no response from the nonpublic school to my letter of notification?**

A good faith effort must be made by the LEA/applicant agency to obtain a response. If no response is or has been forthcoming, be prepared to document your efforts.

### **Step 2: Consultation**

### **12. What is consultation?**

Consultation means a collaborative discussion between the LEA/applicant agency and the appropriate nonpublic school officials which must take place before the development of a comprehensive program plan. The goal of the consultation process is *for all parties involved* to design and implement a program that will provide equitable services and meet the needs of eligible nonpublic school students and/or teachers and other education personnel as well as the needs of eligible LEA/applicant agency students and/or teachers and other education personnel. The needs of the nonpublic school students and teachers do not have to be identical to those of the public school students and teachers and therefore the services may not be same.

### **13. When does consultation occur?**

Consultation must occur before any decision is made that could affect the ability of nonpublic school students, teachers and other education personnel to receive benefits under the grant and must continue throughout the design, implementation and assessment of activities.

### **14. What should consultation focus on?**

Consultation generally must include discussion on such issues as:

- How children's needs will be identified;
- What services will be offered;
- How and where the services will be provided;
- Who will provide the services;
- How the services will be assessed and how the results of assessment will be used to improve those services;
- The amount of funds available for services;
- The size and scope of the services to be provided; and
- How and when decisions about the delivery of services will be made.

In addition, the LEA/applicant agency must thoroughly consider the views of nonpublic school officials on the provision of contract services through potential third-party providers. If the applicant agency disagrees with the views of the nonpublic school officials on the provision of services through a contract, the applicant agency must provide the nonpublic school officials with a written explanation of the reasons why it has chosen to use or not to use a contractor.

**Important:** It is not acceptable for the applicant agency to plan the local project's scope and activities and then offer the nonpublic schools an opportunity to participate in already established project activities.

**15. What happens if the nonpublic schools are not notified or consulted?**

If an applicant fails to notify the appropriate nonpublic school officials or to provide a genuine opportunity for the nonpublic schools(s) to participate in consultation and to document these opportunities, the applicant may be disqualified for funding. In the event of a disqualified applicant, the funding opportunity will be provided to the next qualified applicant.

**16. What is the complaint process if a nonpublic school official believes that the nonpublic school students, teachers, or other educational personnel have not been afforded equitable participation in the grant program?**

According to Section 9503, nonpublic school officials who believe that their students, teachers, or other educational personnel have not been afforded equitable participation in the grant program have the right to file a complaint with the State Educational Agency (SEA). In New Jersey, the nonpublic school official may write a *letter of complaint* to the director of the Office of Grants Appeals, P.O. Box 500, Trenton, NJ 08625.

**17. What are the Financial and Administrative Control of Funds and Property requirements?**

To ensure equitable participation, the applicant agency must spend an equal amount of funds per student to provide services. *Education Department General Administrative Regulations (EDGAR 76.650 - 76.662)* provides guidance on providing benefits to nonpublic school students and teachers.

The applicant agency must maintain administrative control over all funds and property. All grant-funded purchases of equipment, supplies, and services to benefit nonpublic school students and teachers must be made by the applicant agency. The applicant agency cannot transfer funds to the nonpublic school for any reason.

The grantee may place equipment and supplies in the nonpublic school for the period of time needed for the grant. The grantee must ensure that the materials are used only for the purposes of the grant and can be removed from the nonpublic school without remodeling the nonpublic school facility.

## **Eligible and Ineligible Costs**

### **18. What types of nonpublic school services will grant funds typically cover?**

Grant funds may be used for the following:

- Equipment;
- Materials and supplies;
- Purchase of services (including pupil transportation to and from project sites);
- Payment of services of an employee of the LEA/applicant agency to provide services to nonpublic school students and teachers;
- Payment of services of an employee of the nonpublic school only if the employee performs the services outside of his or her regular hours of employment and the employee performs the services under the supervision of the LEA/applicant agency.

**Note:** According to the requirements set forth in the 1985 Supreme Court *City of Grand Rapids v. Ball* decision, the employees of a nonpublic school cannot provide services to the students in that same nonpublic school while in the employ of the LEA/applicant agency; however, these nonpublic school employees may provide services to students in other nonpublic schools while in the employ of the LEA/applicant agency.

**Important:** Please refer to the budget section of the NGO for guidance on the allowability of specific items of cost.

All benefits provided, including equipment and materials, must be secular, neutral, and nonideological.

### **19. What types of costs cannot be supported from grant funds?**

Grant funds may not be used for the following:

- Construction of nonpublic school facilities;
- Payments for services of an employee of the nonpublic school if the employee performs the services during his or her regular hours of employment;
- Costs that support the general educational program of the nonpublic school; and
- Any costs that supplant benefits normally provided by the nonpublic school.

**Attachment A**

***Documentation of Nonpublic School Participation (to be submitted with application)***

**Lead Agency Name:** \_\_\_\_\_ **Application Amount:** \_\_\_\_\_

**NGO Title:** \_\_\_\_\_ **NGO #** \_\_\_\_\_

*“In accordance with federal requirements contained within the No Child Left Behind federal legislation, the following nonpublic school representatives were contacted. They were offered a genuine opportunity to express their interest in participating in the above program before any decision that affects the opportunities of those students, teachers, and other educational personnel in a nonpublic school became final as part of this application.”*

(Note: Signature below of the lead agency’s CSA/CEO certifies that the Participation of Students Enrolled in Nonpublic Schools requirement is understood and certifies lead agency’s eligibility to participate in this grant program.)

INSERT BELOW THE NAME OF EACH OF THE NONPUBLIC SCHOOLS CONTACTED	INSERT BELOW THE SPECIFIC NAME OF THE PERSON CONTACTED ALONG WITH HIS/HER TELEPHONE NUMBER	INSERT BELOW: “YES WILL PARTICIPATE” OR “NO WILL NOT PARTICIPATE”

(Use additional sheets as necessary and please sign each sheet)

\_\_\_\_\_  
Signature of Lead Agency’s CSA/CEO

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

## AFFIRMATION OF CONSULTATION WITH NONPUBLIC SCHOOL OFFICIALS

Section 9501 of the *No Child Left Behind Act* requires that *timely* and *meaningful* consultation occur between the local education agency (LEA) or other applicant agency and nonpublic school officials prior to any decision that affects the opportunities of eligible nonpublic school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

The following topics must be discussed during the ongoing consultation process:

- How the needs of eligible nonpublic school children, teachers or other educational personnel will be identified;
- What services will be offered to eligible nonpublic school children, teachers or other educational personnel;
- How and where the services will be provided;
- Who will provide the services;
- How the services will be assessed and how the results of the assessment will be used to improve those services;
- The amount of funds available for services;
- The size and scope of the services to be provided; and
- How and when decisions about the delivery of services will be made.

**We agree that timely and meaningful consultation occurred before the LEA/applicant agency made any decision that affected the participation of eligible nonpublic school children, teachers or other educational personnel in the <Insert name of grant program> program.**

- ☐ **Yes, we wish to participate in this grant opportunity**  
or  
☐ **No, we do not wish to participate in this grant opportunity**

Official – Public School/Applicant Agency		Date		Nonpublic School Representative		Date
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School District/Applicant Agency	Name of Nonpublic School
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**The LEA/applicant agency must submit a copy of this form, for each nonpublic school consulted with the application for funding.**